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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/467,928	12/21/1999	DAVID GAILLAC	017753-120	2965

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BURNS DOANE SWECKER & MATHIS L L P
POST OFFICE BOX 1404
ALEXANDRIA, VA 22313-1404

EXAMINER

PARKIN, JEFFREY S

ART UNIT	PAPER NUMBER
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1648

DATE MAILED: 08/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/467,928

Applicant(s)

GAILLAC ET AL.

Examiner

Jeffrey S. Parkin, Ph.D.

Art Unit

1648

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 07 July 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 03 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1-12 and 16-31.

Claim(s) withdrawn from consideration: _____

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____

Jeffrey S. Parkin, Ph.D.
Examiner
Art Unit: 1648

Continuation of 3. Applicant's reply has overcome the following rejection(s): the rejection of claims 8 and 12 under 35 USC 112, second paragraph.

Continuation of 5. does NOT place the application in condition for allowance because: claims 1-12 and 16-31 stand rejected under 35 USC 112, first paragraph, for the reasons of record clearly set forth in the last Office action. Applicants submit that page 5 and Examples 4 and 5 provide support for the claimed limitation. Page 5 does not specifically address the issue of infectivity. It simply states that a yield of at least 80% was obtained. Thus it is not clear if the passage references the total amount of virus obtained or the infectivity of the viral composition. Simply referencing a viral yield does not address the issue of infectivity, it is simply a measure of the total amount of virus present. Viral preparations frequently contain defective particles that are not infectious. These particles would also be included in the total yield or quantity of virus. Examples 4 and 5 do not provide support for the specific limitation either. Neither example provides *ipsis verbis* support for the claimed limitation. In fact, neither example even references or discloses viral preparations wherein at least 80% of the infectivity has been retained.

Applicants are reminded that they cannot, as a matter of right, amend any finally rejected claims, add new claims after a final rejection (see 37 CFR 1.116) or reinstate previously canceled claims. However, further examination of the application may be obtained by filing a continued prosecution application (CPA) under 37 CFR 1.53(d), if appropriate. See MPEP 201.06(d).